

FILED

OCT 8 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FRANCIS SCHAEFFER COX,

Defendant-Appellant.

No. 19-30254

D.C. No.
3:11-cr-00022-RJB-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Robert J. Bryan, District Judge, Presiding

Argued and Submitted June 17, 2021
Anchorage, Alaska

Before: RAWLINSON, CHRISTEN, and R. NELSON, Circuit Judges.

Appellant Francis Schaeffer Cox (Cox) appeals the district court's denial of his motion for a *writ of audita querela*. Cox was convicted of, among other things, conspiracy to murder a federal officer in violation of 18 U.S.C. §§ 1117 and 1114 and solicitation to murder a federal officer in violation of 18 U.S.C. §§ 373 and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1114. On appeal, a previous panel affirmed the conspiracy conviction, but reversed the solicitation conviction. *See United States v. Cox*, 705 F. App'x 573, 575 (9th Cir. 2017). Cox maintains that the panel's reversal of the solicitation charge undermined the "jurisdictional foundation" of the conspiracy charge.

1. Reviewing *de novo*, we affirm the denial of Cox's motion seeking a writ of *audita querela*. *See United States v. Gamboa*, 608 F.3d 492, 494 (9th Cir. 2010). Cox is precluded from seeking the writ because he may pursue the same relief by way of a habeas petition. *See id.* at 494–95. Cox concedes that he may file a habeas petition in the future, and provides no authority to support the preemptive issuance of a writ of *audita querela* prior to filing a habeas petition.

2. Cox reiterates his insufficiency-of-the-evidence argument, but the parties agree that we are bound by the prior panel's decision rejecting this claim. For the reasons set forth in the prior disposition, we again reject Cox's insufficiency argument. *See Cox*, 705 F. App'x at 576.

AFFIRMED.